

Message Text

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INFO AMEMBASSY BERLIN

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TAGS: PFOR, PINT, PORG, UN, GW

SUBJECT: THE FRG POSITION ON HUMAN RIGHTS QUESTION

REF: STATE 12320

SUMMARY. THE FRG HAS AN EXCELLENT RECORD IN THE PROTECTION OF BASIC HUMAN RIGHTS, WHICH ARE CONSTITUTIONALLY ASSURED. IT IS REASONABLY ACTIVE IN THE INTERNATIONAL FIELD, BUT IS SKEPTICAL OF WHAT CAN BE ACCOMPLISHED WITHIN THE UN SYSTEM TO FURTHER THE CAUSE OF INDIVIDUAL RIGHTS, IN WHICH IT IS ABOVE ALL INTERESTED. END SUMMARY.

1. IN THE FRG, LEGAL GUARANTEES OF FUNDAMENTAL HUMAN RIGHTS ARE PROVIDED BY THE CONSTITUTION (BASIC LAW). THEY INCLUDE: THE RIGHT TO FREE DEVELOPMENT OF THE PERSONALITY, TO LIFE, TO INVIOABILITY OF THE PERSON, AND TO LIBERTY OF THE INDIVIDUAL; EQUALITY BEFORE THE LAW AND, SPECIFICALLY, EQUAL RIGHTS FOR MEN AND WOMEN; PROHIBITION OF EITHER DISADVANTAGE OR FAVOR ON THE

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BASIS OF SEX, PARENTAGE, RACE, LANGUAGE, ORIGIN, ETC.;

FREEDOM OF RELIGION AND CONSCIENCE; THE RIGHT TO REFUSE WAR SERVICE INVOLVING THE USE OF ARMS; FREEDOM OF SPEECH AND THE RIGHT FREELY TO DISSEMINATE ONE'S OPINION BY SPEECH, WRITING, OR PICTURES; FREEDOM OF THE PRESS; PROHIBITION OF CENSORSHIP; FREEDOM OF ART SCIENCE, RESEARCH, AND TEACHING. THE RIGHTS OF FREE EXPRESSION ARE LIMITED, IN ARTICLE 5(2), BY "THE PROVISIONS OF THE GENERAL LAWS, THE PROVISIONS OF LAW FOR THE PROTECTION OF YOUTH, AND BY THE RIGHT TO INVIOABILITY OF PERSONAL HONOR." ARTICLE 1(3) STATES THAT THE BASIC RIGHTS "SHALL BIND THE LEGISLATURE, THE EXECUTIVE, AND THE JUDICIARY AS DIRECTLY ENFORCEABLE LAW."

2. THERE ARE OF COURSE SIMILAR PROVISIONS IN THE CONSTITUTIONS OF MANY STATES WHERE BASIC RIGHTS ARE NOT IN FACT PROTECTED. THUS THE ULTIMATE GUARANTEE OF THESE RIGHTS IN THE FRG LIES NOT JUST IN THE CONSTITUTIONAL ASSURANCES BUT IN THE WAY IN WHICH THEY ARE GIVEN EFFECT BY REGULAR LEGISLATIVE, JUDICIAL, AND EXECUTIVE ACTION. THE RECENT DECISION OF THE FEDERAL CONSTITUTIONAL COURT ON THE ABORTION REFORM LAW IS A GOOD EXAMPLE OF THE PAINSTAKING BALANCING OF THE BASIC RIGHTS OF THE MOTHER WITH THOSE OF THE UNBORN CHILD AS THE COURT SAW THEM.

3. SOCIAL AND POLITICAL ATTITUDES TOWARD BASIC RIGHTS HAVE BEEN, TO A VERY CONSIDERABLE EXTENT, DETERMINED BY THE TRAUMA OF NAZISM AND THE SECOND WORLD WAR. SINCE THE FOUNDING OF THE WEST GERMAN STATE IN 1949, THERE HAS BEEN A FELT NEED TO DEMONSTRATE THAT THE GERMAN PEOPLE, IN THIS POLITICAL INCARNATION, ARE CAPABLE OF OPERATING SUCCESSFULLY A SYSTEM WHICH IS BASED ON LAW AND WHICH ENSURES FUNDAMENTAL HUMAN RIGHTS. THE RECORD HAS BEEN A VERY GOOD ONE. SUCH PROBLEMS AS HAVE ARISEN HAVE BEEN MAINLY THE RESULT OF A RELUCTANCE ON THE PART OF THE AUTHORITIES -- BASED NOT ON SYMPATHY BUT ON A DESIRE TO AVOID THE EXCESSES OF THE PAST -- TO PROCEED WITH SUFFICIENT FIRMNESS AGAINST EXTREMIST GROUPS WHO THEMSELVES WOULD DEPRIVE OTHERS OF THEIR BASIC RIGHTS. THERE IS NO DOUBT, FOR EXAMPLE, THAT DURING THE PAST DECADE TEACHERS AND MODERATE STUDENTS AT WEST GERMAN LIMITED OFFICIAL USE

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UNIVERSITIES HAVE OCCASIONALLY BEEN PREVENTED BY UNRESTRAINED RADICAL GROUPS FROM EXERCISING THEIR OWN RIGHTS OF FREE SPEECH AND EXPRESSION.

4. FRG ATTITUDES TOWARD QUESTIONS OF HUMAN RIGHTS IN THE INTERNATIONAL SPHERE ARE OF COURSE STRONGLY INFLUENCED BY THE CONTINUING DIVISION OF GERMANY AND BY THE FRG'S CONDEMNATION OF THE VIOLATIONS OF INDIVIDUAL

RIGHTS WHICH OCCUR IN THE GDR, THE MOST EGREGIOUS OF THESE BEING THE DENIAL OF FREEDOM OF MOVEMENT AND THE VIOLENCE FREQUENTLY USED AGAINST THOSE WHO ATTEMPT TO LEAVE THE GDR WITHOUT PERMISSION. THIS HAS MEANT THAT THE FRG'S MAIN EMPHASIS HAS BEEN ON THE RIGHTS OF THE INDIVIDUAL. GERMAN OFFICIALS NOTE THAT THE GENERAL

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DECLARATION ON HUMAN RIGHTS OF 1948 EXERCISED CONSIDERABLE INFLUENCE ON THE THINKING OF THE PARLIAMENTARY COUNCIL WHICH DREW UP THE FRG'S BASIC LAW. THEY REGRET THE QUALIFICATIONS WHICH THE PRINCIPLES RELATING TO INDIVIDUAL RIGHTS UNDERWENT IN THE HUMAN RIGHTS CONVENTIONS OF 1966. NEVERTHELESS, THE FRG (ALONG WITH THE SCANDINAVIANS) IS ONE OF THE FEW WESTERN DEMOCRACIES TO HAVE RATIFIED THESE CONVENTIONS, LARGELY ON THE REASONING THAT THEY ARE BETTER THAN NOTHING.

5. GENERALLY, THE WEST GERMANS ARE SKEPTICAL ABOUT THE PROSPECTS FOR DOING ANYTHING VERY EFFECTIVE IN THE UN FRAMEWORK TO FURTHER THE RIGHTS OF THE INDIVIDUAL.

THOSE WITH WHOM WE HAVE TALKED NOTE THAT THERE HAS BEEN CONCRETE REGIONAL PROGRESS THROUGH THE COUNCIL OF EUROPE AND THE EUROPEAN COMMISSION FOR HUMAN RIGHTS, IN WHICH THE FRG IS DEEPLY INTERESTED AND IN WHICH IT ACTIVELY PARTICIPATES. THIS COULD SERVE AS A MODEL FOR THE UN, BUT IN THE GERMAN VIEW THE PRESENT CONSTELLATION OF FORCES MILITATES STRONGLY AGAINST IT. THIS IS DUE TO THE VAST MAJORITY ENJOYED BY THE COUNTRIES OF LIMITED OFFICIAL USE

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THE THIRD WORLD, TO THEIR PREOCCUPATION WITH PROPAGANDISTIC TREATMENT OF SUCH SUBJECTS AS RACISM, COLONIALISM, AND APARTHEID, AND TO THE INTEREST OF THE SOCIALIST COUNTRIES IN SUPPORTING THIS APPROACH WHILE AT THE SAME TIME REJECTING AS AN INTRUSION INTO THEIR INTERNAL AFFAIRS ANY SERIOUS EFFORT TO PROMOTE INDIVIDUAL RIGHTS. THE GERMANS FAVOR THE IDEA OF SETTING UP A HIGH COMMISSIONER FOR HUMAN RIGHTS TO WHOM CONCRETE COMPLAINTS COULD BE BROUGHT, BUT THEY SEE LITTLE CHANCE OF ITS BEING REALIZED IN THE FORESEEABLE FUTURE.

6. BECAUSE OF THE SITUATION IN THE GDR AND BECAUSE OF THE STILL EXISTING GERMAN MINORITIES IN MANY EASTERN EUROPEAN COUNTRIES, THE FEDERAL GOVERNMENT IS FACED WITH CONSTANT PUBLIC PRESSURE ON THE SUBJECT OF INDIVIDUAL RIGHTS, REFLECTED INTER ALIA IN PARLIAMENTARY QUESTIONS ASKING WHETHER THE FRG WILL USE ITS NEWLY ESTABLISHED POSITION IN THE UN TO DO SOMETHING ABOUT THESE PROBLEMS. THE GENERAL DIRECTION OF THE ANSWERS WHICH THE FOREIGN OFFICE PROVIDES IS THAT THE UN DOES NOT SEEM TO OFFER GOOD PROSPECTS FOR CONCRETE IMPROVEMENTS AND THAT TO USE IT AS A PROPAGANDA FORUM FOR AIRING GERMAN COMPLAINTS ON THESE ISSUES WOULD ALMOST CERTAINLY BE COUNTER-PRODUCTIVE.
HILLENBRAND

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